*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.16052 of 2007

% 28-9-2007

M/s. Sri M.Ravinder Reddy ..
Petitioner

and

$ The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad
and another ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Prasad Rao Vemulapalli

^ Counsel for respondents : Sri P.Ganga Rami Reddi

?CASES REFERRED :

1. 1995(1) SCC 478
2. 2005(6) SCC 138

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16052 of 2007

Date : 28-9-2007

Between :

M/s. Sri M.Ravinder Reddy ..
Petitioner

and

The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad
and another ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16052 of 2007

ORDER:

1. Heard Sri Prasad Rao Vemulapalli, the learned Counsel representing the writ petitioner and Sri P.Ganga Rami Reddi, the learned Standing Counsel for the respondents.

2. The only question which had been argued in elaboration is rejecting the tender of the writ petitioner who is incidentally the managing partner of the partnership firm, without taking into consideration the qualifications of the writ petitioner and further holding that the partnership firm as such is not otherwise qualified, in the facts and circumstances cannot be sustained. The learned Counsel placed strong reliance on the decision of the Apex Court in **New Horizons Ltd. Vs. Union of India** [1]**.** The learned Counsel also while elaborating his submissions had taken this Court through the eligibility criteria and also the other relevant qualifications which had been produced by way of material papers before this

Court.

3. Per contra, Sri Ganga Rami Reddi, the learned Standing Counsel representing the respondents placed strong reliance on the decision of the Apex Court in **Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd. and another** [2] and would maintain that in the contractual field, the power of judicial review being limited, normally a decision of this nature not to be disturbed while exercising the power of judicial review under Article 226 of the Constitution of India. The learned Standing Counsel also distinguished the decision of the Apex Court referred (1) supra on the ground that in the eligibility criteria there is a specific condition to the effect that in case the tenderer is a partnership firm, the experience, solvency and the turnover shall be in the name of the firm only and such a condition had not fallen for consideration in the decision of the Apex Court referred (1) supra. The learned Counsel also had taken this Court through the contents of the counter affidavit and would maintain that at any rate in the light of the limitations placed on this Court in disturbing a decision of this nature in the realm of contracts, the Writ Petition is liable to be dismissed.

4. Heard the Counsel.

5. The Writ Petition is filed for a writ of mandamus declaring the action of the 2nd respondent in rejecting the tender of the petitioner through his letter No.W.Con.496/A/RG/4841/Vol.II(WC.3) dated 25-7-2007 as arbitrary, illegal and against the principles of natural justice and consequently to restore the tender of the petitioner and to pass such other suitable orders.

6. It is stated in the affidavit filed in support of the Writ Petition that the petitioner has been in works contracts of various State and Central Government organizations and their instrumentalities for the last 15 years and since it became rather difficult to execute works of higher denominations by himself, the petitioner had entered into partnership with Sri M.Mukund Reddy on 25-8-2003. The said firm is registered with the Registrar of Firms, Hyderabad bearing No.1145 of 2003 dated 25-8-2003. Thereafter, the said firm was reconstituted with the present partners i.e., M.Ravinder Reddy, Smt.M.Jyothi on 1-4-2005. It is stated that prior to entering into partnership with either Sri Mukund Reddy or Smt.Jyothi, the petitioner had been executing works on his name and in the process he had accumulated certain credentials that would entitle and enable the petitioner to take up works of relatively higher denominations. Subsequent to

forming of the partnership firm, all the assets and liabilities of the petitioner were taken over by the firm and a Certificate in that regard was issued by the Chartered Accountants. It is further stated that M.Ravinder Reddy had executed works on his personal name and one such work was restoration of BG Line from Kakinada town to Kotipalli-construction of Major Bridge No.121 at Ch.41173M as 5x12.20 cm clear span released steel girders with well foundation and approach formation from Ch. 41000M to Ch.41300M through agreement bearing No.67/CAO/C/SC/2002 dated 16-5-2002 for a value of Rs.1,06,04,771.30. Thus, as an individual, M.Ravinder Reddy has experience, expertise in construction of bridges with well foundations. In that regard the Chief Engineer/Const., South Central Railway had issued a Certificate to M.Ravinder Reddy on 13-9-2004. After forming M/s.Sri M.Ravinder Reddy, the petitioner had constructed a Major Birdge No.383 proposed as 6x12.30M PSC girders at Ch.75507M between Karimnagar and Jagityal stations through agreement bearing No.06/CAO/C/SC/2004 dated 12-1-2004 which was completed on 9-8-2005. The Chief Engineer/Const.IV, South Central Railway had issued a certificate to the said effect on 7-12-2005. According to the said Certificate, the petitioner had

acquired the necessary experience and expertise to execute works pertaining to PSC works. It is also further stated that the 2nd respondent had called for tenders for the second time for construction of Bridge No.84 on Tanguturu main canal proposed as 1x24.00M (Clear span) with PSC box girder on well foundations at chainage 86510M between S.Uppalapadu-Jammalamudugu stations in connection with construction of new BG Line from Nandyal to Yerraguntla through Tender Notice No.25/CAO/C/SC/2007 dated 15-5-2007. As per the said notice, the tender Schedules will be issued upto 1100 hours on 20-6-2007, the last date for submission of the tenders was 20-6-2007 and the tenders shall be opened on the same day at 11.30 hrs. In response to the said tender notice, the petitioner had purchased the tender Schedule on its name and it is fully eligible for taking up the work and submitted the tender. After opening of the tender, it appeared that the petitioner was the only tenderer who had submitted the tender Schedule and it was orally informed that the decision of the Tender Committee/Competent authority shall be communicated in due course of time. In addition to Tender Notice, Clause 2.0 at page-16 of the Tender Schedule contains the eligibility criteria for the prospective

tenderers and the same is as hereunder :

2.1 (a) The tenderer(s) should have physically completed at least one similar single work viz., Construction of Major Birdges with well foundation and superstructure with PSC slabs/girders for a minimum value of 35% of advertised tender value in the three financial years (i.e., current year and three financial years) i.e., after 1-4-2004 upto the date of tender opening.

(b) The total value of similar nature of work completed during the qualification period and not the payments received within qualifying period alone shall be considered. In case final bill of similar nature of work has not been passed, paid amount including statutory deductions will be considered if final measurements have not been recorded and work has been completed with negative variation. However, if final measurements have been recorded or if final measurements have been recorded and work has been completed with positive variation has not been sanctioned, original contract value of the work will be considered for judging eligibility.

(c) In case of composite works involving combination of different works, even separate completed works of required value will be considered while evaluating the eligibility criteria. For example, in a tender for bridge works where similar nature of work has been defined as bridge works with well foundation and PSC superstructure, a tenderer who had completed one bridge work with well foundation of value at least equal to 35% of tender value and also had completed one bridge

work with well foundation of value at least equal to 35% of tender value and also had completed one bridge work with PSC superstructure of value of at least equal to 35% of tender value during the qualifying period as mentioned above shall be considered as having qualified the eligibility criterion of having completed single similar nature of work.

2.2 The total contract amount received during the last three years and in the current financial year should be a minimum of 150% of advertised tender value of work. The tenderer is required to submit current ITCC of Audited balance sheet duly certified by a Chartered Accountant to this effect with regard to turnover.

2.3 The tenderer(s) should submit Banker's Solvency Certified to the extent of 40% of advertised tender value of works.

It is further stated that having regard to the qualifying criteria, the petitioner had submitted the Certificates issued by the Chief Engineer/IV-Const., South Central Railway as proof of executing similar works with required financial component, the Solvency Certificate issued by its bankers. The South Indian Bank Ltd., Secunderabad Branch, the turnover certificate issued by its auditors, M/s.SJR & Associates, Dilsukhnagar, Hyderabad and other particulars as required in the tender schedule. The petitioner had also paid Rs.5,00,000/- towards earnest

money deposit through an instrument of its bankers. Thus, the petitioner had submitted all the required material for considering it for awarding the notified work. However, to the utter surprise and consternation of the petitioner, it received a letter from the 2nd respondent on 25-7-2007 stating that the tender has been discharged and its earnest money deposit shall be released. As the said letter did not state as to why the tender had been discharged, the petitioner through its letter dated 25-7-2007 had requested the 2nd respondent to furnish it the reasons for the discharge. Although the petitioner did not receive any official communication, it reliably learnt that the tender is being discharged as the petitioner did not meet the qualifying criteria and the petitioner further understands that the reason for rejecting the tender of the petitioner was that as per Clause 2.6 of the tender schedule, the experience certificates submitted by the petitioner did not reflect that the previous works were executed in the name of the petitioner. It is also further stated that the Certificate dated 13-9-2004 reflects the name of the Managing Partner of the petitioner who had executed and completed a work on 15-6-2004 for value of Rs.1,06,04,771.90 and he received payment to the tune of Rs.90,16,536/- upto 5-6-2004. As the said M.Ravinder

Reddy joined the petitioner firm as its Managing Partner with 75% of the total stake, it is obvious that his experience in his personal capacity automatically merges with that of the petitioner. As a matter of fact, the petitioner firm through its resolution dated 1-4-2006 took over the entire assets and liabilities of M.Ravinder Reddy much prior to floating of the present tender. The respondents had misconstrued Clause 2.6 whereby the petitioner is deprived to prosecute its violation. As a matter of fact, on earlier occasions, the respondents had been considering the experiences of partners of partnership firms/joint ventures/consortia even on the face of clause similar to that of 2.6 and the present hurdle is being created only to eliminate the petitioner and may be with a view to help some other contractor which amounts to discrimination and violates Article 14 of the Constitution of India. By misconstruing Clause 2.6, the respondents are preventing the petitioner from practicing its chosen profession which again violates Article 19(1)(g) of the Constitution of India. It is specifically stated that the view taken by the authorities is contrary to Clause 2.1 which provides for considering the quantities of two different works if the said works contain similar nature of work and it does not say that the work had to be on the name of the firm submitting the tender. It is further stated that by interpreting Clause

2.6 of the Tender Schedule in a manner as they did, the respondents are depriving a contractor/firm from improving its/his credentials which will enable him/it to tender for works of higher denomination. As per the practice in vogue and as per the tender schedule, to participate in the present tender, the prospective tenderer should have completed at least 35% of the work tendered. In a given situation if more than one small time contractors come together to pool their resources and experience and form a Company/Firm to participate in works of higher denominations they will be deprived to participate in works of higher denominations for the rest of their life and they can never grow which is not the intention behind Clause 2.1 and similar clauses incorporated in various schedules. Thus, the respondents will be scuttling the contractors from taking up works of higher denomination though they had required expertise and experience in their individual capacity. The petitioner is advised that it violates the fundamental rights of the petitioner and cannot be sustained. The conditions incorporated in a document should be read harmoniously so as to enable the parties to achieve their goals and not to scuttle the growth of any individual. In the aforesaid circumstances, the action of the 2nd respondent in

rejecting the tender of the petitioner through his letter dated 25-7-2007 is arbitrary, illegal and against the principles of natural justice and hence the same is liable to be set aside.

7. In the counter affidavit filed on behalf of the respondents, which was sworn to by the Chief Engineer/Construction-III, South Central Railway, Secunderabad a stand is taken that Clause 2.7 of Special Conditions and Specifications of Work of the tender document stipulates that in case of tenderer(s) is a partnership firm, the experience, solvency and turnover should be in the name and style of the firm only and therefore the petitioner's contention that he has accumulated certain credentials that would entitle and enable him to take up works of relatively higher denominations cannot be agreed. Further, when the partnership had been formed and all the assets and liabilities had been taken over by the partnership firm, the credentials of Sri M.Ravinder Reddy in his individual capacity cannot be considered when the petitioner had dropped his offer in the name of M/s.Sri M.Ravinder Reddy. It is also stated that in case the tenderer is a partnership firm, the experience, solvency and turnover shall be in the name and style of the firm only. Though Sri M.Ravinder Reddy had acquired the necessary

experience and expertise to execute works pertaining to the works he is tendering for and possesses the required certificates from the concerned authorities, they cannot be taken into consideration for finalizing the tender if the same is not in the name and style on whose name the tender is submitted. In the present case, it is very clear that the tender had been submitted in the name and style of M/s.Sri M.Ravinder Reddy and therefore although valid experience certificates had been submitted in support of their experience and credentials, they cannot be considered as they are in the name and style of the individual. It is also further stated that it is a fact that the petitioner had participated in the subject tender in the second call vide tender notice No.25/CAP/C/SC/2007 dated 15-5-2007 opened on 20-6-2007, but, the petitioner had submitted the same copies of experience certificates in support of its credentials. It is also further stated that the present work is involving combination of well foundation and PSC superstructure. Even separated completed works of required value can be considered while evaluating the eligibility criteria as per clause 2.1(c) of eligibility criteria. The petitioner had executed required percentage of work for construction of PSC girders vide certificate submitted for construction of Bridge No.382

proposed as 6x12.30 m PSC girders at Ch.75507 M between Karimnagar and Jagityal stations through agreement bearing No.06/CAO/SC/2004 in respect of Bridge No.121 at Ch.41173 m as 5x12.20m clear span released steel girders with well foundation and approach information from Ch.41000m to Ch.41300m through agreement bearing No.67/CAO/C/SC/2002 dated 16-5-2002 for value of Rs.1,06,04,771.30 had been executed on the name of Sri M.Ravinder Reddy, Hyderabad to the required value. Since the work with well foundations mentioned aforesaid had been executed and completed by Sri M.Ravinder Reddy, Hyderabad and not M/s.Sri M.Ravinder Reddy, the contention of the petitioner that he had submitted all the required material for considering it for awarding the notified work is not correct. It is also further stated that it is a fact that the petitioner is the single bidder with respect to Tender Notice No.25/CAO/C/SC/2007 dated 15-5-2007 for item No.11. Although, Sri M.Ravinder Reddy had joined the petitioner-firm as its Managing partner with 75% of the total stake, his experience in his personal capacity did not automatically merges with that of the petitioner. The submission of the petitioner that the present hurdle is being created only to eliminate the petitioner with a view to help some other contractor is absolutely false and

incorrect. Further, the contention of the petitioner that by misconstruing Clause 2.6, the administration is preventing the petitioner from practicing its chosen profession is baseless. The present work is a composite work and it is difficult to expect the tenderers to have a single similar work certificate with 35% of the contract value. Further, the contention of the petitioner that the view taken by the authorities is contrary to Clause 2.1 which provides for considering the quantities of two different works if the said works contain similar nature of work and that it does not say that the work has to be on the name of the firm submitting the tender is not correct. In such circumstances, it was prayed that the Writ Petition to be dismissed, with costs.

8. In the decision referred (1) supra, the Apex Court while dealing with Government contracts and the acceptance of tenders in relation to the eligibility of the tenderers and the company and the lifting of corporate veil especially in the joint ventures had arrived at the conclusion that the experience of the constituents of the joint venture company should be treated as its own experience. It is no doubt true that certain of the observations made by the Apex Court in the aforesaid decision appear to be in favour of the writ petitioner.

9. The learned Standing Counsel representing the respondents had placed strong reliance on the decision of the Apex Court on the decision referred (2) supra wherein the Apex Court observed at paras 7 to 15 **as hereunder :**

> **"**In order to appreciate the contention raised by the learned Counsel for the parties, it is necessary to briefly notice the relevant part of the tender document. Chapter I deals with "Instructions Regarding Submission of the Tender". Para 2 gives a long list of documents which had to be submitted for prequalification bid. The relevant parts of para 1, para 2, para 3 and para 11 of the Instructions are being reproduced below :
>
> 1. The tendering will be through a two-bid process. Document duly completed should be submitted in two parts.
> 2. First part will consist of "prequalification bid" for tender for professional services for survey of cargo/containers for CONCOR at ICD/TKD and should be superscribed as such. It should be sealed in a separate envelope, to be called envelope "A". The envelope must contain the following documents :
>
> (a) ***
>
> ***
>
> (g) Copy of licence to act as surveyor/loss assessor
>
> under the Insurance Act, 1938.
>
> 3. The second part will consist of the "financial

bid" for tender for professional services for survey of containers and cargo for CONCOR at ICD/TKD and should be superscribed similarly on the second envelope as such. Only the schedule of rates as given in Annexure III should be completely filled up, signed and placed in this envelope which should be sealed. This envelope will be called Envelope "B".

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11. CONCOR reserves the right to amend the tender document, if considered necessary, with due intimation to respective tenderers prior to the last date of submission. CONCOR also reserves the right to extend the date of submission and opening of tender if considered necessary to allow reasonable time to the tenderers in such cases.

CONCOR also reserves the right to – Acctpt or reject any tender in part or in full without assigning any reason whatsoever.

- Relax the tender condition at any stage if considered necessary for the purpose of finalizing the contract in the overall interest of CONCOR and the trade.
- Accept/reject any or all the technical bids or financial bids.

The tender document shows that CONCOR had adopted a two-bid process for making selection and award of the contract. The first part consisting of "prequalification bid" required submission of documents to show proof of experience, deposit of earnest money, constitution of the firm/company,

turnover for the past three years, proof in support of having employed at least 20 persons including IICL-certified supervisors for the preceding three years. The second part related to financial bid and this was to be considered only for such tenderers who were shortlisted in the prequalification bid. Para 2(g) which has been quoted above, only required "a copy of licence to act as surveyor/loss assessor under the Insurance Act, 1938". It may be noted that the tender document does not say that in case where a company has made a bid the licence to act as surveyor/loss assessor under the Insurance Act must be in the name of the company itself or that a licence personally in the name of the Chairman or a Director of a company would not be treated as a valid compliance with the requirement of tender. Para 11 of the Instructions is important. CONCOR reserved the right to amend the tender document, if considered necessary, with due intimation to the respective tenderers prior to the last date of tender submission. CONCOR also reserved the right to relax the tender conditions at any stage, if considered necessary, for the purpose of finalizing the contract in the overall interest of CONCOR and the trade.

The Tender Evaluation Committee of the second respondent held a meeting on 17-1-2004 where the technical bids of the appellant and the second respondent were considered and recorded as under in the notings:

> "The documents given by M/s.Metcalfe are perfectly in order. There is slight ambiguity about one of the documents given by

M/s.Master Marine Services. This concerns the surveyor licence. The licence is issued in the name of Mr.Percy Meher Master who is the sole proprietor of M/s.Master Marine Services. The licence issued by IRDA mentions Mr.Percy as being the sole proprietor of M/s.Master Marine Services. As per our tender criteria, clause 1(d), Chapter 2 (p.6) mentions that the tenderer must have licence to act as surveyor/loss assessor under the Insurance Act, 1938. TEC feels that there are only two bidders in this tender. It would be desirable to prevent this tender from lapsing into a single-bidder tender. Therefore, TEC feels that, subject to the approval of the accepting authority, Master Marine Services can be asked to provide proof of the company i.e., Master Marine Services, having a survey licence in the name of the Company. This might require the Companyto get an endorsement on the licence issued to Shri Percy as per clause 3 of the licence issued by IRDA. The Committee feels that subject to M/s.Master Marine fulfilling this condition, both the bidders can be considered for shortlisting and date fixed for opening the financial bids by the accepting authorities.

This is without prejudice to the competent authority's discretion to accept/reject/modify/amend the Committee's recommendations."

A letter was thereafter sent to the appellant to provide proof that the Company is having a licence

in its name or an endorsement in the name of the Company in their subsisting licence issued by IRDA. The appellant informed that the licence had been issued in the name of Capt. Percy Meher Master in his capacity as proprietor of Master Marine Services, who was now the Chairman of the Company and a copy of the resolution of the Board was also enclosed. TEC then considered the matter again and recorded the following in the minutes of the meeting:

> "TEC, therefore, opines that M/s.Master Marine Services Pvt.Ltd. is known to be an established surveyor doing work for a number of shipping lines at various CONCOR terminals. Moreover, Mr.Percy Meher Master who was the sole proprietor of M/s.Master Marine Services has been appointed the Chairman of the Company by its Board. Therefore, they do have adequate experience and credentials to carry out the survey activities.
>
> In view of the above, the Tender Committee is of the opinion that we may qualify both the tenderers, M/s.Master Marine Services Pvt. Ltd. and M/s.Metcalfe & Hodgkinson Pvt. Ltd. for their technical capabilities. It is therefore recommended that the financial bids of these two agencies can be opened on a date with due intimation to both the bidders.
>
> Competent authority may accept/reject/modify the recommendations of TEC as deemed fit".

The recommendation of TEC was accepted and the appellant was held to be qualified and the

financial bids of the first respondent and the appellant were thereafter opened. As already stated, the financial bid of the appellant was Rs.3.00 as against Rs.3.75 of the first respondent and date entry i.e., recording of counter number, seal number, condition of seal and external condition of container on arrival and dispatch of containers from ICD. It is also the case of the second respondent that the major work (98%) under the contract is of the aforesaid nature for which no licence under IRDA is required. Thereafter, the work was awarded to the appellant.

The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great deal by a three-Judge Bench in *Tata Cellular v. Union of India* (1994) 6 SCC 651). It was observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose

cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the Report, SCC para 70).

After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesday principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure (See para 113 of the Report, SCC para 94).

In *Sterling Computers Ltd. v. M & N Publications Ltd.* (1993) 1 SCC 445) it was held as under : (SCC p.458, para 18-19):

> "18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the decision making process'. … By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at same time .. the courts can certainly examine whether 'decision-making process' was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.
>
> 19. If the contract has been entered into without ignoring the procedure which can be said to be basic I nature and after an objective consideration of different options available taking into account the interest of the State and the public, then court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract".

In *Raunaq International Ltd. Vs. I.V.R. Construction Ltd.* (1999) 1 SCC 492) it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services

offered are of the requisite specifications and whether the person tendering is of the ability to deliver the goods or services as per specifications.

The law relating to award of contract by the State and public sector corporations was reviewed in *AIR India Ltd. v. Cochin International Airport Ltd.* (2000) 2 SCC 617) and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bonafide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

10. The well settled principles relating to interference by this Court in relation to contractual field need not be reiterated again. It is no doubt true that in the present case, some material had been placed before this Court to show that Mr.Ravinder Reddy as such is having

the requisite eligibility criteria or the qualifications. Elaborate submissions were made in relation thereto. The relevant certificates produced before this Court need not be elaborately discussed. However, it may be pertinent to have a look at the relevant portions of the Special Conditions and specifications of work. Under Clause 2.0 the eligibility criteria and credentials of the tenderer had been specified. Clause 2.1 reads as hereunder :

> (a) The tenderer(s) should have physically completed at least one similar single work viz., "Construction of Major Bridges with Well foundation and Superstructure with PSC slabs/girders" for a minimum value of 35% of advertised tender value in the last three financial years (i.e., current year and three financial years) i.e., after 1-4-2004 upto the date of tender opening.
>
> (b) The total value of similar nature of work completed during the qualifying period and not the payments received within qualifying period alone, shall be considered. In case, final Bill of similar nature of work has not been passed, paid amount including statutory deductions will be considered if final measurements have not been recorded and work has been completed with negative variation. However, if final measurements have been recorded or if final measurements have been recorded and work has been completed with positive variation but variation has not been sanctioned original contract value of work shall be considered for judging eligibility.

(c) In case of composite works involving combination of different works, even separate completed works of required value will be considered while evaluating the eligibility criteria. For example, in a tender for bridge works where similar nature of work has been defined as bridge works with Well foundation and PSC superstructure, a tenderer, who had completed one bridge work with Well foundation of value at least equal to 35% of tender value and also had completed one bridge work with PSC superstructure of value at least equal to 35% of tender value during the qualifying period as mentioned above shall be considered as having fulfilled the eligibility criterion of having completed single similar nature of work".

Strong reliance was placed on Clauses 2.1 (b) and (c) and submissions at length were made in this regard. Further it is pertinent to note that Clause 2.7 reads as hereunder :

(i) In case the tenderer is a partnership firm(s), the experience, solvency and turnover shall be in the name and style of the firm only.

(ii) If the Tenderer is a partnership firm, all the partners shall be jointly and severely liable for successful completion of the work and no request for change on the certification of the Firm shall be entertained.

(iii) During the currency of the contract, no partner of the firm shall be permitted to withdraw from the partnership business and in such an event it shall be treated as breach of trust and abandonment of

contract.

Strong reliance was placed on Clause 2.7(i) that in case the tenderer is a partnership firm(s), the experience, solvency and turnover shall be in the name and style of the firm only. It is needless to say that when there is a specific condition in the terms and conditions and when the writ petitioner is having ample knowledge about the terms and conditions, the writ petitioner cannot be permitted to contend otherwise. It is also pertinent to note that the general provisions under the Indian Partnership Act relating to the rights and obligations of the partners inter se cannot be imported into this contractual field concerned with the tender forms while deciding the validity or otherwise of the decision taken by the relevant Committee. It is also pertinent to note that the decision referred (1) supra is distinguishable on facts especially in the light of the specific eligibility criteria which had been referred to supra. Apart from this aspect of the matter, in the light of the fact that in the realm of contractual field, the power of judicial review to be exercised within the specified limitations, this Court is not inclined to interfere with the impugned action. Accordingly, the Writ Petition shall stand dismissed. No order as to costs.

Justice P.S.Narayana

Date : 28-9-2007

L.R. copy to be marked : YES / NO

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[1] **1995(1) SCC 478**

[2] **2005(6) SCC 138**